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Christopher M. Shelton
President

Via Fax

March 31, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: Ex Parte Notice. In the Matter of Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Service. WC Docket No. 05-25, RM-10593.

Dear Chairman Wheeler:

It is our understanding that the Commission's review of the competitiveness of the special access market is entering its final stages. The Communications Workers of America (CWA) has a deep interest in the outcome of this proceeding. CWA represents 700,000 employees in telecommunications and information technology, airlines, news media, broadcast and cable television, education, health care and public service, manufacturing, law enforcement, and other fields. Tens of thousands of CWA members build, maintain, and service the dedicated business services that are the subject of this investigation. The outcome of this proceeding has significant implication for jobs, network investment, and competition.

As the Commission considers appropriate action in this proceeding, CWA urges the Commission to be guided by these considerations: first, the FCC data collection conclusively demonstrates that the special access market is highly competitive; second, cable companies must be included in the competitive analysis; third, Commission action must incent job-creating investment in new networks; and fourth, Commission action should promote a level playing field and good, family-supporting jobs.

The FCC data collection demonstrates that the special access market is highly competitive. The FCC data demonstrates a robustly competitive market for both circuit-switched and fiber Ethernet data services to businesses. According to an analysis of the FCC data by Compass Lexecon economists, competitors have deployed facilities in virtually every census block with special access demand.[1] These census

[1] *See* Public Version of the Competitive Analysis of the FCC's Special Access Data Collection (White Paper) by Mark Israel, Daniel Rubinfeld, and Glen Woroch, WC Docket No. 05-25, Jan. 27, 2016. To promote a free, fair, and transparent debate regarding the state of competition in the special access marketplace, CWA encourages the Commission to make aggregate-level statistics gleaned from the special access data collection available to the public. Keeping the aggregate data from public view means that only the FCC and outside counsel can really understand the state of competition in the marketplace.

blocks average 0.15 square miles, less than a square city block. Competitors can and do compete for business customers who are located in buildings close to their fiber rings, and build laterals from their fiber networks to serve those customers.

Moreover, industry research confirms that the market for dedicated business services is highly competitive. According to the Vertical Systems Group, six of the top nine providers of Ethernet data services to businesses and enterprises in 2015 were competitive providers. These include Level 3 (#2), Time Warner Cable (#5), Comcast (#6), Cox (#7), XO (#8), and Windstream CLEC (#9).[2]

Cable companies are now a leading competitor for business data services and must be included in the Commission's competitive assessment. Special access rules must be grounded in a fact-based, transparent assessment of the competitive environment – one that counts *all* providers of dedicated business services. But the competitive providers have wrongly argued that cable services should not be counted. Cable, by its own admission, is an important special access competitor. As the National Cable & Telecommunications Association (NCTA) recently explained, "cable operators play a significant and growing role in the market for business data services...[C]able operators have been expanding the number of commercial buildings they serve, the geographic footprint of their networks, and the type of services they offer to business customers (including increasing use of service level agreements."[3]

The cable companies have been the fastest growing segment of the dedicated business services segment for the past three years, outpacing incumbent carriers.[4] Cable business revenues have grown to an estimated $14 billion.[5] Certainly, a cable companies' best-efforts 100 Mbps service must be considered a competitive alternative to an incumbent carrier's 1.5 Mbps DS-1 or 45 Mbps DS-3 service.

Commission action should preserve and promote incentives for investment in facilities-based competition. Sustainable competition – and job creation – comes from facilities-based providers, not resellers. As Chairman Wheeler explained in a recent interview, "you want to create an environment where people are going head to

[2] Vertical Systems Group, 2015 U.S. Carrier Ethernet LEADERBOARD, Feb. 25, 2016 (available at http://www.verticalsystems.com/vsglb/2015-u-s-carrier-ethernet-leaderboard/). Rank order is based on retail port share.

[3] Letter from Steven F. Morris, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, WC Docket No. 05-25, March 22, 2016.

[4] Vertical Systems Group, *2015 U.S. Cable MSO Ethernet LEADERBOARD,* March 9, 2016 (available at http://www.verticalsystems.com/vsglb/2015-u-s-cable-mso-ethernet-leaderboard/)

[5] US Telecom, "The Competitive Business Broadband Marketplace," February 2016, p. 6 (available at https://www.ustelecom.org/sites/default/files/files/USTelecom-White-Paper-2.pdf)

head...how can you ever win if you have to buy your capacity from your competitor?"[6] As we learned from the DSL Internet experience, resale competition is not sustainable and does not lead to job-creating infrastructure investment. In this proceeding, the Commission should reject any action that would discourage providers -- both incumbents and competitors -- from investment in new networks. For competitors, why invest if you can buy capacity at an artificially constrained rate? And for incumbents, why invest if artificially constrained rates dampen business opportunities?

Special access regulation in a competitive environment dissuades providers from job-creating investment in next-generation fiber networks. Market analysts estimate that somewhere between 58 percent and 76 percent of U.S. business buildings do not have lit fiber connections.[7]

Commission action should promote a level playing field and good, family-supporting jobs. In the highly competitive market for business data services, regulatory policy should not favor some companies over others – and certainly should not destroy good, middle-class jobs. But in the Special Access proceeding, competitive providers seek to gain competitive advantage through regulatory arbitrage. They want to subject incumbent providers to regulatory constraints, including price regulation, while they are free to negotiate discount prices and other favorable conditions.

Such an outcome would have serious consequences for jobs and investment. Incumbent providers like AT&T, Verizon, CenturyLink, and Frontier employ a skilled, career workforce with collectively-bargained good wages, benefits, and working conditions. In contrast, the cable companies and competitive providers pay lower wages and benefits, make extensive use of a less-skilled, contract workforce, and block their employees' efforts at collective organization.

Competition must be based on innovation and service, not a race to the bottom on workers' wages and workplace rights. Given the highly competitive special access market, Commission action in this proceeding that would artificially constrain incumbent carriers' ability to compete for business data services and dampen incentives for these companies to invest in new fiber infrastructure would serve to destroy good, middle-class jobs for CWA members and lower living standards throughout the competitive telecommunications industry.

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[6] Ars Technica, "Why Tom Wheeler rejected broadband price caps and last-mile unbundling," March 19, 2016 (available at http://arstechnica.com/business/2016/03/why-tom-wheeler-rejected-broadband-price-caps-and-last-mile-unbundling/)

[7] Vertical Systems Group, "Business Fiber Penetration Hit 42.5% in U.S.," March 31, 2015 (available at http://www.verticalsystems.com/vsgpr/business-fiber-penetration-hits-42-5-in-u-s/) (for the 58 percent statistic); Calculations based on Fiberlocator database (for the 76 percent figure) (available at fiberlocator.com)

Therefore, CWA urges the Commission to ensure that any decision in this proceeding be rooted in a complete, transparent assessment of the special access marketkplace, one that counts *all* providers, including cable companies. The special access rules should not favor some competitors over others and should promote good jobs and investment in next-generation networks.

Sincerely,

Christopher M. Shelton
President

c: Commissioner Jessica Rosenworcel
Commissioner Mignon Clyburn
Commissioner Ajit Pai
Commissioner Michael O'Rielly